

# CITY COUNCIL REPORT



Meeting Date: September 10, 2013  
 General Plan Element: ***Public Services and Facilities***  
 General Plan Goal: ***Provide reliable power and communication services that match the character of Scottsdale***

## **ACTION**

**Authorize License Agreement with Verizon Wireless for access across City-owned property.** Adopt Resolution 9516 authorizing Contract 2012-187-COS to allow Verizon Wireless access across city property located at 11989 North 136<sup>th</sup> Street.

## **BACKGROUND**

The purpose of this action is to enter into a License Agreement with Verizon Wireless, granting access across City-owned property on the east side of 136<sup>th</sup> Street south of Cactus Road.

Verizon Wireless is planning the installation of wireless facilities on a subdivision tract owned by the Scottsdale Mountain Community Association. The tract is adjacent to 136<sup>th</sup> Street, but has no direct access due to surrounding Natural Area Open Space. The city owns a pump station site immediately south of the tract that would provide access to the proposed wireless facilities. The proposed license agreement will allow Verizon Wireless access over the city's pump station site to construct and maintain its wireless facilities. Once installed, Verizon Wireless anticipates routine maintenance of its facilities will be less than six times per year. The additional wireless facilities will provide greater communications capacity in the area for existing and future customers.

## **ANALYSIS & ASSESSMENT**

### **Recent Staff Action**

Water Resources staff has determined that the requested access would not interfere with City's use of the site. Under the terms of the agreement, Verizon Wireless will pay a use fee to the City of \$2,000 for a five year term, with the option to renew for four additional five-year periods. The use fee will increase to \$2500 upon the first renewal, and by an additional \$200 for each subsequent renewal. The nominal fees associated with the license are in direct correlation with the minimal anticipated use. Verizon Wireless must maintain Commercial General Liability insurance in the amount of \$2,000,000 and Automobile insurance in the amount of \$1,000,000. City has the right to terminate the license with 90 days notice.

### **Policy Implications**

Action Taken \_\_\_\_\_

No Policy Implications are related to this action.

**Significant Issues to be Addressed**

None.

**Community Involvement**

Verizon held a meeting with the Scottsdale Mountain HOA to discuss the proposed wireless communication facility. Mailings from Verizon and Planning were sent to nearby residents and a notice of the Design Review Board public hearing was posted on the site.

**RESOURCE IMPACTS**

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**Available funding**

Verizon Wireless is responsible for all costs associated with its use and access of the site, including damage to any on-site city improvements.

**Staffing, Workload Impact**

Minimal impact associated with the administration of the agreement.

**Maintenance Requirements**

There are no additional maintenance requirements to the city for the proposed use.

**Future Budget Implications**

City will receive compensation for the proposed use. No negative impacts have been identified in connection with the use.

**OPTIONS & STAFF RECOMMENDATION**

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**Recommended Approach**

Adopt Resolution 9516 authorizing Contract 2012-187-COS with Verizon Wireless.

**Proposed Next Steps:**

If Council approves this action, the payment will be accepted and the License Agreement will be executed.

**RESPONSIBLE DEPARTMENT(S)**

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Public Works and Water Resources Division, Capital Project Management

Asset Management, Capital Project Management will manage the license agreement upon activation.

**RESPONSIBLE DEPARTMENT(S)**

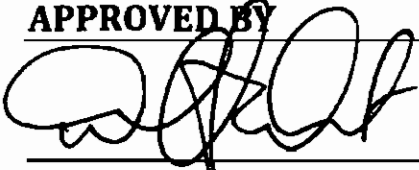
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Paul Baumgardt, Right-of-Way Agent, 480-312-7847, PBaumgardt@ScottsdaleAZ.gov

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Maria Muiser, Asset Management Coordinator, 480-312-7853, [MMuiser@ScottsdaleAZ.gov](mailto:MMuiser@ScottsdaleAZ.gov)

**APPROVED BY**



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Daniel J. Worth, Executive Director, Public Works

(480) 312-5555, [dworth@scottsdaleaz.gov](mailto:dworth@scottsdaleaz.gov)

8.27.13

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Date

## **ATTACHMENTS**

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1. Resolution 9516
2. Location Map
3. Contract 2012-187-COS

RESOLUTION NO. 9516

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2012-187-COS FOR THE PURPOSE OF THE INSTALLATION OF WIRELESS COMMUNICATION FACILITIES.

WHEREAS, the City of Scottsdale has determined that it is beneficial to enter into an agreement with Verizon Wireless (VAW), LLC, granting access to Verizon across City property for the installation of wireless communication facilities.

NOW, THEREFORE, LET IT BE RESOLVED, by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The Mayor of the City of Scottsdale is hereby authorized and directed to execute contract no. 2012-187-COS for the purpose of the installation of wireless communication facilities.

Section 2. That the Mayor of the City of Scottsdale, the City Manager and/or their designees are authorized and directed to approve/execute such other and further documents as are necessary to carry out the purpose of contract no. 2012-187-COS.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this \_\_\_\_\_ day of \_\_\_\_\_, 2013.


ATTEST:

CITY OF SCOTTSDALE, an Arizona  
Municipal Corporation

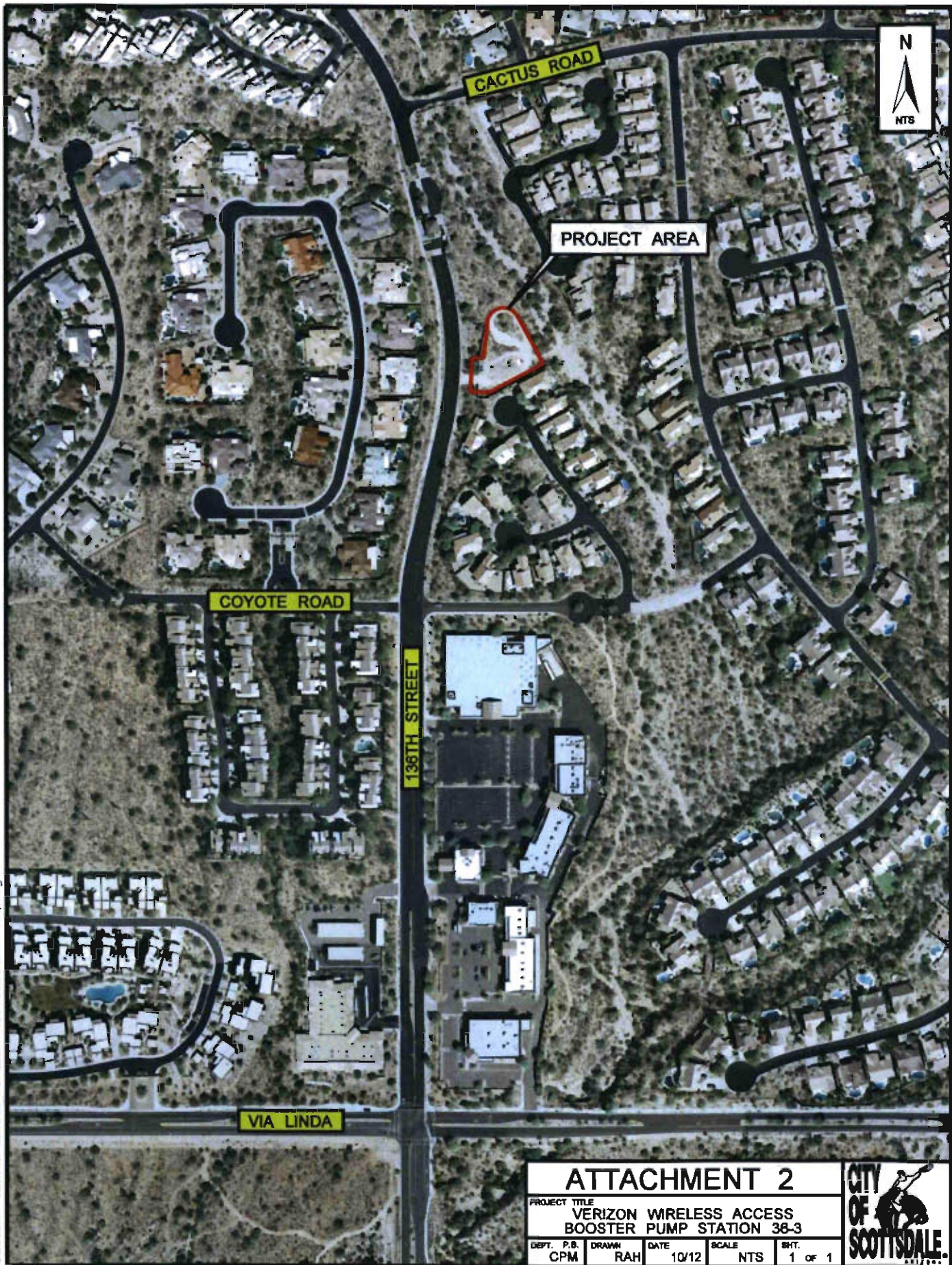
By: \_\_\_\_\_  
Carolyn Jagger  
City Clerk

By: \_\_\_\_\_  
W.J. "Jim" Lane  
Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By:  \_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Joe Padilla, Senior Assistant City Attorney





## ATTACHMENT 2

PROJECT TITLE  
VERIZON WIRELESS ACCESS  
BOOSTER PUMP STATION 38-3

DEPT.	P.B.	DRAWN	DATE	SCALE	SHT.
CPM		RAH	10/12	NTS	1 OF 1





**WHEN RECORDED, RETURN TO:**

City of Scottsdale  
One Stop Shop/Records  
7447 E. Indian School Road, Suite 100  
Scottsdale, AZ 85251

**LIMITED USE LICENSE AGREEMENT**

THIS LIMITED USE LICENSE AGREEMENT (the "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the City of Scottsdale, an Arizona municipal corporation ("City"), and Verizon Wireless (VAW) LLC, a Delaware limited liability company dba Verizon Wireless ("Licensee").

**RECITALS**

A. The City desires to grant to Licensee a license to enter upon the real property described in Exhibit "A" attached hereto ("the Property") for the sole purpose of ingress and egress to Licensee's wireless communication facility ("the facility") located on property adjacent to the Property.

B. The City reserves the right to manage and maintain the Property and this agreement only creates a license to use portions of the Property and is not intended to create a lease, easement or other real property interest in the Property.

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and agreements contained herein to be kept and performed by Licensee, and other good and valuable consideration, City and Licensee agree as follows:

**I. THE PROPERTY**

1. **License Area.** The City hereby grants to the Licensee a license to access and use certain portions of the Property subject to the requirements of this Agreement. The licensed area is identified on Exhibit "B" attached hereto and incorporated herein.

1.1 **Permitted Uses.** The Permitted Uses in the licensed area are limited to activities that are directly related to ingress and egress to Licensee's wireless communication facility, including the following: (1) remove and replace up to two (2) wooden posts for the purposes of accessing the facility; and (2) the operation of equipment and vehicles to construct, service and maintain Licensee's facility.

a) If City controls access to the Property by means of a locked gate or other improvement, Licensee shall be provided the necessary equipment or codes to gain access to the Property.

b) If the City begins construction activities on the Property, Licensee shall be notified of the changes to access and the type of restrictions that are imposed on the access to the Property.

c) Failure of the Licensee to abide by any access restrictions imposed by the City after reasonable notice may result in termination of this Agreement.

1.2 No Real Property Interest. Notwithstanding any provision hereof to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee's rights in the Property are limited to the specific limited license rights created by this Agreement, which creates only a revocable license in the Property. City and Licensee do not by this instrument intend to create a lease, easement or other real property interest. Licensee shall have no real property interest in the Property.

1.3 Rights in Adjacent Land. Licensee's rights are expressly limited to use the licensed area identified in Exhibit "B". Without limitation, in the event any public right-of-way or other public or private property adjacent to the Property is owned, dedicated, abandoned or otherwise acquired, used, improved or disposed of by City, such property shall not accrue to this Agreement but shall be City's only.

1.4 Condition of Title. Licensee's rights hereunder are subject to all covenants, conditions, restrictions, easements, agreements, liens, reservations and encumbrances upon, and all other recorded or unrecorded conditions of title to, the Property.

1.5 Condition of the Property. Licensee has examined, studied and inspected the Property, and all other property associated with this Agreement and its environs. The Property is being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to its condition or fitness for any use. Licensee has obtained such information and professional advice as Licensee has determined to be necessary related to this Agreement.

## II. TERM OF AGREEMENT

2. Term of Agreement. City hereby grants a license to Licensee subject to and conditioned upon Licensee's full, timely, complete and faithful performance of all performances and things to be performed or done hereunder by Licensee, and Licensee hereby accepts the Property and this Agreement.

2.1 Original Term. The term of this Agreement shall be for a period of five (5) years commencing on the date of this Agreement unless sooner terminated as set forth in this Agreement.

2.1.1 Option to Renew. Licensee shall have the option to extend this Agreement for four (4) additional successive five (5) year terms upon the written notification to the City of not less than ninety (90) days prior to the end of any term of Licensee's intention to extend the term, and upon receipt of a payment by Licensee to the City of the Renewal Fees in Section 3.2.

2.2 Holding Over. In any circumstance whereby Licensee would remain in possession of the Property after the expiration of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement.

### III. LICENSE PAYMENTS

3. License Payments. Licensee shall pay to City all of the following payments together with all other payments required by this Agreement (all payments by Licensee to City required by this Agreement for any reason are collectively the "Fee"):

3.1 Fee. Licensee shall pay to the City the initial Fee for the first five (5) years for use of the Property. Such fee shall be Two Thousand Dollars (\$2,000).

3.2 Fees Upon Renewal. Upon exercising its option to renew, Licensee shall pay to the City:

3.2.1 First Option to Renew for five (5) years – Two Thousand Five Hundred Dollars (\$2,500).

3.2.2 Second Option to Renew for five (5) years – Two Thousand Seven Hundred Dollars (\$2,700);

3.2.3 Third Option to Renew for five (5) years – Two Thousand Nine Hundred Dollars (\$2,900);

3.2.4 Fourth Option to Renew for five (5) years – Three Thousand One Hundred Dollars (\$3,100).

3.3 Damage Fee. Licensee shall pay to the City as a damage fee all costs incurred by the City to repair any damage to any improvements or other items belonging to the City that have been caused by the Licensee, its employees, agents or contractors.

3.4 Fee Payment Date. Licensee shall pay to the City the amount of Two Thousand Dollars (\$2,000) for the use of the Property upon execution of this Agreement. All option renewal fees shall be paid within thirty (30) days after the City has been notified of the exercising of the Option to Renew.

a) Fee Payment Location. All fee payments shall be delivered to City of Scottsdale, 7447 E. Indian School Road, Scottsdale, AZ 85251, ATTN: Real Estate Management Specialist.

3.5 Late Fees. Should any Fee not be paid on or before the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due, or One Hundred Dollars (\$100). Furthermore, any Fee that is not timely paid shall accrue interest at the rate of one percent (1%) per month from the date the amount first came due until paid.

### IV. USE RESTRICTIONS

4. Use Restrictions. Licensee's use of the Property shall in all respects conform to all and each of the following cumulative provision:

4.1 Permitted Uses. Licensee shall use the Property solely for the Permitted Uses, set forth in this Agreement, and shall conduct no other activity at or from the Property.

4.2 No Improvements. The placement of any material, equipment, facilities, debris and temporary or permanent improvements upon the Property by Licensee is expressly prohibited.



4.3 Paving. No paving of any kind is permitted.

4.4 Litter. Licensee shall implement reasonable efforts to keep the Property free of litter.

4.5 Prohibited Names. Licensee shall not use or allow use in connection with any of its operations at the Property any name that directly or indirectly refers to or contains any part of City's name or otherwise suggests a connection between City and Licensee or Licensee's activities.

4.6 Hazardous Materials. Licensee shall not produce, dispose, transport, treat, use or store any Toxic Substance upon or about the Property. Any hazardous waste or materials or toxic substance or any substance now or hereafter subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Toxic Substances"). The prohibitions of the preceding sentence only shall not apply to ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction or landscaping machinery serving the Property when such materials are properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles installed in such vehicles and machinery. In addition to any other indemnities or obligations, Licensee shall pay, indemnify, defend and hold City harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Property attributable to or caused by Licensee or anyone using the Property or acting or claiming under Licensee or this Agreement or otherwise relating to this Agreement. Licensee shall immediately notify City of any prohibited Toxic Substance at any time discovered or existing upon the Property.

4.7 Clean Water Act Liability. Licensee shall indemnify and hold City harmless from and against all liabilities, obligations, damages, penalties, claims, causes of action, costs, charges and expenses, including attorneys' fees and costs, which may be imposed under or incurred by or asserted against City by reason of any use of the Property arising under the Clean Water Act (33 U.S.C. § 1344) or of any 404 Permit, by Licensee, its employees, servants, agents, guests, or invitees. In case any such action or proceeding is brought against City, upon City's request Licensee shall resist and defend such action or proceeding, or cause the same to be resisted and defended either by counsel designated by Licensee, or where such occurrence is covered by liability insurance by counsel designated by the insurer. This indemnification is in addition to the indemnification set forth in Article 8 of this Agreement.

4.8 Dust Control. Licensee shall comply with all applicable state, county and municipal laws, rules and ordinances regarding dust generation and suppression. Licensee shall indemnify and hold City harmless from and against all liabilities, obligations, damages, penalties, claims, causes of action, costs, charges and expenses, including attorneys' fees and costs, which may be imposed under or incurred by or asserted against City by reason of any use of the Property by Licensee in violation of any law, rule, or ordinance regulating dust generating activities. This indemnification is in addition to the indemnification set forth in Article 8 of this Agreement.

4.9 Restoration. Any material, equipment, facilities, temporary structures, debris or improvements placed upon the Property by Licensee shall be removed or, at the option of the City, shall be forfeited and become property of the City. Licensee shall restore damage caused by construction of and improvements to the Property. Licensee shall restore the Property to an ecologically stable condition. If Licensee fails to restore the Property within six (6) months after

notice by the City, this Agreement shall be subject to termination in accordance with Article 7. Licensee's obligation to restore the Property at Licensee's cost shall survive termination of this Agreement.

4.10 Existing Agreements. This Agreement is subject to any leases, rights of way, and permits which validly exist prior to the commencement date of this Agreement, and any and all present commitments in connection with those leases and permits. Licensee shall in no way interfere with the peaceful possession and use of the Property by a valid surface leaseholder or permittee of the Property.

4.11 Licensee shall not cause nor grant permission to another to cause any waste in or upon the Property.

## V. IMPROVEMENTS

### 5. Improvements Generally.

5.1 Improvements by City. City has not promised to and is not obligated in any manner to make any improvements to the Property.

## VI. BREACH BY LICENSEE

6. Breach by Licensee. Licensee shall comply with, perform and do each performance and thing required of Licensee herein and shall cause all persons using the Property or claiming through or under Licensee or this Agreement to do the same. Licensee's failure to do so shall be a breach by Licensee of this Agreement.

6.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" and a material breach by Licensee of Licensee's material obligations under this Agreement:

6.1.1 If Licensee shall be in arrears in the payment of any Fee and shall not cure such arrearage within ten (10) days after City has notified Licensee of such arrearage.

6.1.2 If Licensee shall fail to maintain any insurance required by this Agreement.

6.1.3 If Licensee is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding or if any assignment of any of Licensee's property shall be made for the benefit of creditors, (collectively a "Licensee Insolvency").

6.1.4 If Licensee shall fail to or neglect to timely and completely do or perform or observe any other provisions contained herein and such failure or neglect shall continue for a period of thirty (30) days after City has notified Licensee in writing of Licensee's default hereunder.

6.2 City's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, City may, at its option and from time to time, exercise any or all or any combination of the following cumulative remedies in any order and repetitively at City's option:

6.2.1 Terminate this Agreement.

6.2.2 Without demand or notice, enter into and upon [all or part of] the Property and repossess the same, and expel Licensee and those claiming by, through or under it, and

remove their effects, if any, forcibly if necessary, without being deemed guilty of trespass and without prejudice to any other remedy.

6.2.3 Pay or perform, for Licensee's account, in Licensee's name, and at Licensee's expense, any or all payments or performances required hereunder to be paid or performed by Licensee.

6.2.4 Be excused without any liability to Licensee therefore from further performance under this Agreement.

6.2.5 Insist upon Licensee's full and faithful performance under this Agreement and upon Licensee's full and timely payment of all amounts during the entire remaining term of this Agreement.

6.2.6 Require an additional Fee adequate in City's sole discretion to protect City and the Property.

6.2.7 Assert, exercise or otherwise pursue at Licensee's expense any and all other rights or remedies, legal or equitable, to which City may be entitled.

6.3 Non-waiver. Licensee acknowledges Licensee's unconditional obligation to comply with this Agreement. No failure by City to demand any performance required of Licensee under this Agreement, and no acceptance by City of any imperfect or partial performance under this Agreement, shall excuse such performance or impair in any way City's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by City of Fee or other performances hereunder shall be deemed a compromise or settlement of any right City may have for additional or further payments or performances. Any waiver by City of any breach of condition or covenant herein contained to be kept and performed by Licensee shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent City from declaring a default for any breach or succeeding [or continuing] breach either of the same condition or covenant or otherwise.

6.4 Inspection. City shall have access to the Property at all times for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or exercising City's other rights hereunder.

## VII. TERMINATION

7. Rights at Termination. Termination of this Agreement due to Licensee's breach or for any other reason does not terminate Licensee's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or in any way terminate any of Licensee's liability related to this Agreement.

7.1 Delivery of Possession. At the expiration or termination of this Agreement, Licensee shall without demand, peaceably and quietly quit and deliver up the Property to City thoroughly cleaned, in good repair.

7.2 Cancellation. This Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

7.3 Convenience. This Agreement may be terminated at the convenience of the City with ninety (90) days written notice to Licensee.

7.4 Refund of Fees. In the event of termination of this Agreement for convenience, any amounts paid to the City shall be refunded to Licensee on a pro rata basis.

### VIII. INDEMNITY AND INSURANCE

8. Licensee shall insure the Property and its property and activities at and about the Property and shall provide insurance and indemnification as follows:

8.1 Insurance Required. Prior to entering, occupying or using the Property in any way all times thereafter, and in any event not later than the execution date of this Agreement, and at all times thereafter Licensee shall obtain and cause to be in force and effect the following insurance:

8.1.1 Commercial General Liability. Commercial general liability insurance with a limit of One Million Dollars (\$1,000,000.00) for each occurrence and a Two Million Dollars (\$2,000,000.00) general aggregate limit per policy year. The policy shall cover liability arising from the premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, any medical incident based on any activities conducted in the Property, and liability assumed under an "insured contract" including this Agreement. The policy will cover Licensee's liability under the indemnity provisions of this Agreement, subject to standard policy provisions and exclusions. The policy shall contain a "separation of insureds" clause. If any Excess Insurance is utilized to fulfill the requirements of this paragraph, the Excess Insurance must be a "follow form" equal or broader in coverage scope than underlying.

8.1.2 Automobile Liability. Business automobile liability insurance with a Combined Single Limit of One Million Dollars (\$1,000,000) for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Licensee's use of the Property. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off loading.

8.1.3 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) disease for each employee, Five Hundred Thousand Dollars (\$500,000) policy limit for disease.

8.1.4 Other Insurance. Any other insurance City may reasonably require for the protection of City and City's employees, officials, representatives, officers, directors, and agents (collectively "Additional Insureds"), Licensee, or the activities carried on or about the Property. Likewise, City may elect by notice to Licensee to increase the amount of any insurance to account for inflation, changes in risk, or any other factor that City reasonably determines to affect the prudent amount of insurance to be provided. In addition, the General Liability and Automobile Liability limits of insurance shall be increased at each five (5) year anniversary of this Agreement and in increments of not less than One Million Dollars (\$1,000,000.00).

8.2 Form of Insurance. All insurance policies shall meet the following requirements:

8.2.1 All policies except workers' compensation and employer's liability must name City and the other Additional Insureds as additional insureds. Licensee shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement. City may give Licensee notice of City's election from time to time that any or all of the Additional Insureds not be named as Additional Insureds with respect to specific insurance coverages.

8.2.2 All applicable policies must name City as a loss payee as respects any proceeds relating to the Property.

8.2.3 If Licensee receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Licensee's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

8.2.4 All policies shall require that notices be given to City in the manner specified for notices to City under this Agreement.

8.2.5 Policies must also cover and insure Licensee's activities relating to the business operations and activities conducted from the Property.

8.2.6 Licensee must clearly show by providing certificates, and blanket additional insured endorsements that all insurance coverage required by this Agreement is provided.

8.2.7 All policies shall contain provisions that neither Licensee's breach of a policy requirement or warranty, nor failure to follow claims reporting procedures, shall affect coverage provided to City.

8.2.8 Licensee shall be wholly responsible for any deductible or retention, if applicable.

8.2.9 All insurance policies shall contain a waiver of any transfer rights of recovery (subrogation) against City and all other Additional Insureds.

8.2.10 Licensee shall be solely responsible for any self-insurance amount or deductible.

8.3 Insurance Certificates. Licensee shall evidence all insurance by furnishing to City certificates of insurance annually and with each material change in insurance. Certificates must evidence that the policy referenced by the certificate is in full force and effect and that the policy satisfies each major requirement of this Agreement applicable to the policy. Certificates must be on an ACORD or equivalent form. Licensee shall provide updated certificates at City's request.

8.4 Acceptable Insurers. All Insurance policies shall be issued by insurers acceptable to City. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

8.5 Primary Insurance. Licensee's insurance shall be primary insurance as related to Licensee's operations. Any insurance or self insurance maintained by City shall not contribute to Licensee's insurance.

8.6 City's Election to Provide Insurance. In the event Licensee fails to procure or maintain any part of the insurance required hereunder within thirty (30) days after notice of such failure from City, City may elect to acquire all or any part of such insurance. In such event, Licensee shall reimburse City for the actual, reasonable costs of such insurance within thirty (30) days after receipt of an invoice from City.

8.7 Indemnity. In addition to all other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances



under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Licensee and all other persons using, acting, working or claiming through or for Licensee or this Agreement (if they participated in causing the claim in question) shall jointly and severally pay, indemnify, defend and hold harmless City and all other Additional Insureds for, from and against any and all claims or harm related to the Property and this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings) which may arise in any manner out of any use of the Property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including any injury or damages or cause of action claims or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Property or surrounding areas related to this Agreement, including without limitation, claims, liability, harm or damages caused in part by City or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Licensee or City may be liable. Notwithstanding the foregoing, the Indemnity does not apply to:

8.7.1 Claims arising only from the sole negligence of City.

8.7.2 Claims that the law prohibits from being imposed upon Licensee.

8.8 Risk of Loss. Licensee assumes the risk of any and all loss, damage or claims to the Property or related to Licensee's use of the Property throughout the term hereof. City expressly disclaims any representation that required insurance is adequate to protect any person or property against any risks related to the Property or any activities, uses or improvements related to the Property. Licensee's obligations to indemnify do not diminish in any way Licensee's obligations to insure; and Licensee's obligations to insure do not diminish in any way Licensee's obligations to indemnify. Licensee's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Licensee under or connected with this Agreement. In the event Licensee secures other insurance related to the Property or any improvements, property or uses related thereto, Licensee shall effect an endorsement under such policy waiving any and all insurer's rights of subrogation against City and the other Additional Insureds.

## IX. ENVIRONMENTAL MATTERS

9. Definition of Regulated Substances and Environmental Laws. For purposes of this Agreement, the term "Environmental Laws" shall include but not be limited to any relevant federal, state, or local environmental laws, and the regulations, rules and ordinances, relating to environmental matters, and publications promulgated pursuant to the local, state, and federal laws and any rules or regulations relating to environmental matters. For the purpose of this Agreement, the term "Regulated Substances" shall include but not be limited to substances defined as "regulated substance," "solid waste," "hazardous waste," "hazardous materials," "hazardous substances," "toxic materials," "toxic substances," "inert materials," "pollutants," "toxic pollutants," "herbicides," "fungicides," "rodenticides," "insecticides," "contaminates," "pesticides," "asbestos," "environmental nuisance," "criminal littering," or "petroleum products" as defined in Environmental Laws.

9.1 Compliance with Environmental Laws. With respect to Licensee's use and operation of the Property, Licensee shall strictly comply with all Environmental Laws, including, without limitation, water quality, air quality, and handling, transportation, storage, treatment, or disposal of any Regulated Substance on, under, or from the Property. Without limiting the foregoing, compliance includes that Licensee shall: (i) comply with all reporting obligations imposed under Environmental Laws and provide a copy to City of any reports filed by Licensee pursuant to Environmental Laws where a spill, discharge, leak or release in violation of Environmental Laws occurs on the Property and constitutes waste of a part or all of the Property; (ii) obtain and maintain all permits required by Environmental Laws and provide a copy to City within thirty (30) business days of receipt of the permit; (iii) provide copies of all documentation required by Environmental Laws to City within thirty (30) business days of Licensee's submittal and/or receipt of the documentation; (iv) during the Term of this Permit, provide copies to City of all information it receives or obtains regarding any and all environmental matters relating to the Property, including but not limited to environmental audits relating to the Property regardless of the reason for which the information was obtained or whether or not the information was required by Environmental Laws; and (v) prevent treatment, storage, disposal, handling or use of any Regulated Substances within the Property without prior written authorization from City except as is customary for properties used for similar purposes in Maricopa County, Arizona, and provided that any such treatment, storage, disposal, handling or use of any Regulated Substances is in compliance with applicable Environmental Laws.

9.2 Audit. At any time during the Term of this Agreement, if City has any reason to believe that there may be any violation of Environmental Laws occurring or having occurred on the Property or that the condition of the Property warrants an assessment of its environmental condition, City may request, in writing, Licensee to provide an environmental audit of the Property performed by an Arizona registered professional engineer or an Arizona registered geologist. Licensee shall pay the entire cost of the audit. The environmental audit shall include preparation of a report, to be provided to City, which contains the following: verification of Licensee's compliance with environmental permits; a description of the nature of the condition found to exist on the Property, an evaluation of the effectiveness of Licensee's environmental management system; discussion of effective solutions to common environmental issues in Licensee's operation; and generation of protocols or other checklists to manage Licensee's operation in compliance with Environmental Laws.

9.3 Environmental Assessments. At any time during the term of this Agreement, if City has any reason to believe that there may be any violation of Environmental Laws occurring or having occurred on the Property, City may require Licensee to obtain a Phase I environmental assessment of the Property performed by an Arizona registered professional engineer or an Arizona registered geologist. If, based upon the subsequent Phase I environmental assessment or its own independent investigation, City identifies any possible violation of (i) Environmental Laws or (ii) the terms of this Agreement, City may require Licensee to conduct additional environmental assessments it deems appropriate for the purpose of ensuring that the Property is in compliance with Environmental Laws. The Phase I assessment, or any other assessment required by City, shall be obtained for the benefit of both Licensee and City. A copy of the Phase I report shall be provided both to Licensee and City. City, in its sole discretion, shall have the right to require Licensee to perform additional assessments of any damage to the Property arising out of any violations of Environmental Laws not already identified in the Environmental Assessment. If Licensee fails to obtain any assessment required by City, Licensee shall pay the entire costs of any and all assessments required by City, notwithstanding the expiration or termination of this Agreement.

9.4 Indemnity for Environmental Damage. Licensee shall defend, indemnify and hold City harmless from and against any and all liability, obligations, losses, damages, penalties, claims, environmental response and cleanup costs and fines, and actions, suits, costs, taxes, charges, expenses and disbursements, including legal fees and expenses of whatever kind or nature (collectively, "claims" or "damages") imposed on, incurred by, or alleged against City by a third party, including any governmental agency, in any way relating to or arising out of any non-compliance by Licensee, with any Environmental Laws, the existence or presence of any Regulated Substance, on, under, or from the Property and first occurring after the Commencement Date and prior to the termination of this Agreement, or the vacating of the Property by Licensee or the holding over by Licensee of or in the Property, and any claims or damages in any way relating to or arising out of the removal, treatment, storage, disposition, mitigation, cleanup or remedying of any Regulated Substance on, under, or from the Property, the presence of which was caused by, or which was otherwise explicitly or tacitly permitted to occur by the Licensee, its agents, contractors, or subcontractors.

9.5 Scope of Indemnity. Licensee's indemnity shall include, without limitation, claims or damages arising out of any and all violations of Environmental Laws first occurring during the term of this Agreement regardless of any real or alleged fault, negligence, breach of warranty or strict liability on the part of any of the indemnitees. This indemnity shall survive the expiration or conclusion of this Agreement and/or transfer of all or any portion of the Property and shall be governed by the laws of the State of Arizona.

9.6 Licensee's Participation in the Defense. In the event any action or claim is brought or asserted against City which is or may be covered by this indemnity, City shall give immediate written notice of said action or claim to Licensee, which notice shall include a copy of all documents or information received by City concerning the action or claim and the basis for City's belief that the action or claim is covered under Licensee's indemnity/defense obligation. Licensee shall fully participate, at Licensee's expense, in the defense of the action or claim including but not limited to the following: (i) the conduct of any required cleanup, removal or remedial actions and/or negotiations, (ii) the conduct of any proceedings, hearings, and/or litigation, and (iii) the negotiation and finalization of any agreement or settlement. City shall retain the right to make all final decisions concerning the defense.

9.7 Restoration. At the conclusion of this Agreement and in addition to those obligations set forth in this Agreement, Licensee shall restore the Property by removing any and all Regulated Substances. In addition, the restoration shall include, but not be limited to, removal of all waste and debris deposited by the Licensee. If the Property is damaged or destroyed because of the existence or presence of any Regulated Substance, or if the Property or any portions thereof are damaged or destroyed in any way relating to or arising out of the removal, treatment, storage, disposition, mitigation, cleanup or remedying of any Regulated Substance, the Licensee shall arrange, at its expense, for the repair, removal, remediation, restoration, and reconstruction to the Property to substantially the same condition existing on the date that the Licensee first occupied the Property, to the satisfaction of City. In any event, any damage, destruction, or restoration by Licensee shall not relieve Licensee from its obligations and liabilities under this Agreement.

#### X. NATIVE PLANTS AND ARCHAEOLOGICAL RESOURCES

10. Licensee shall comply with the provisions of the Arizona Native Plant Law, A.R.S. § 3-901 et seq., or any successor statutes, and with Arizona laws relating to archaeological discoveries, A.R.S. § 41-841 et seq., or any successor statutes. Licensee shall not disturb any

cacti or other protected native plants nor disturb any ruins, burial grounds or other archaeological sites except as may be permitted by these laws. In addition, Licensee shall notify City of any prehistoric or historic archaeological discoveries on the Property.

#### XI. LICENSEE'S RECORDS

11. Licensee's Records. For a period ending seven (7) years after termination of this Agreement, Licensee will maintain in a secure place within Maricopa County, Arizona proper and accurate books, records, ledgers, correspondence, and other papers and repositories of information, relating in any manner to this Agreement and to all of Licensee's obligations hereunder.

11.1 Right of Inspection. So long as the same shall be pertinent to this Agreement or any transactions contemplated herein and, in any event, for a period extending at least seven (7) years after termination of this Agreement, Licensee will at Licensee's expense (i) permit and assist City and its representatives at all reasonable times to inspect, audit, copy and examine, as applicable, Licensee's facilities, activities and records, (ii) cause its employees and agents and, if City reasonably determines it to be necessary, accountants to give their full cooperation and assistance in connection with any such visits or inspections, (iii) make available such further information concerning Licensee's business and affairs relating to the Property as City may from time to time reasonably request, and (iv) make available to City at Licensee's offices located within the corporate limits of the City of Scottsdale reasonable accommodations for City's audit and inspection. Such inspection shall be limited to matters relevant to City's and Licensee's rights and obligations under this Agreement as reasonably determined by City.

#### XII. COMPLIANCE WITH LAW

12. Compliance with Law. Licensee shall use and occupy the Property in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended. Licensee acknowledges that this Agreement does not constitute, and City has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Licensee with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City or any other governmental body upon or affecting Licensee, the Property, or Licensee's use of the Property. This Agreement does not impair the City's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers, affecting in any way Licensee, or the Property.

#### XIII. ASSIGNABILITY

13. Assignability. This Agreement may be assigned by Licensee with the written permission of the City.

#### XIV. MISCELLANEOUS

14. Miscellaneous.

14.1 Severability. If any provision of this Agreement is declared void or defective, that declaration shall not affect the validity of any other provision of this Agreement.

14.2 Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties.

14.3 Conflicts of Interest. No member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

14.4 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

14.5 Nonliability of City Officials and Employees. No member, official, representative or employee of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by City or for any amount which may become due to any party or successor, or with respect to any obligation of City or otherwise under the terms of this Agreement or related to this Agreement.

14.6 Notices. Notices hereunder shall be given in writing [delivered to] the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to City: City of Scottsdale  
7447 E. Indian School Road, Suite 205  
Scottsdale, AZ 85251  
ATTN: Asset Management Coordinator

Copy to: City of Scottsdale  
3939 N. Drinkwater Blvd.  
Scottsdale, AZ 85251  
Attn: City Attorney

If to Licensee: Verizon Wireless (VAW) LLC,  
d/b/a Verizon Wireless  
180 Washington Valley Blvd.  
Bedminster, NJ 07921  
ATTN: Network Real Estate  
(Site: PHO Bashas)

By notice from time to time, a party may designate any other street address within Maricopa County, Arizona as its address for giving notice hereunder. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

14.7 Time of Essence. Time is of the essence of each and every provision of this Agreement.

14.8 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding the Property.

14.9 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.



14.10 No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder.

14.11 Exhibits. All exhibits attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

14.12 Attorneys' Fees. In the event any action or suit or proceeding is brought by City to collect the Fees due or to become due hereunder or any portion hereof or to take possession of the Property or to enforce compliance with this Agreement or for Licensee's failure to observe any of the covenants of this Agreement or to vindicate or exercise any of City's rights or remedies hereunder, Licensee agrees to pay all costs of such action or suit and all expenses of such action or suit together with such sum as the court may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

14.13 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.

EXECUTED as of the date first given above.

LICENSEE: Verizon Wireless (VAW) LLC, a Delaware limited liability company dba Verizon Wireless

By: Brian Mecum 7-26-13

Name: Brian Mecum

Its: Area Vice President Network

CITY: CITY OF SCOTTSDALE,  
an Arizona municipal corporation

By: \_\_\_\_\_  
W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

Joe Padilla

Bruce Washburn, City Attorney

By: Joe Padilla, Senior Assistant City Attorney

ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

Edward M. Howard  
Edward M. Howard, Risk Management Director

NOTARY ACKNOWLEDGMENT


STATE OF CALIFORNIA

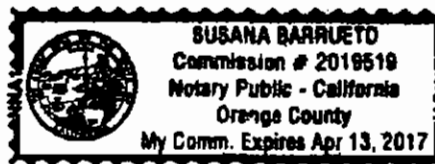
COUNTY OF ORANGE

On July 26, 2013 before me, SUSANA BARRUETO, a Notary Public, personally appeared Brian Mecum who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
Signature of Notary Public



STATE OF ARIZONA

Place Notary Seal Above

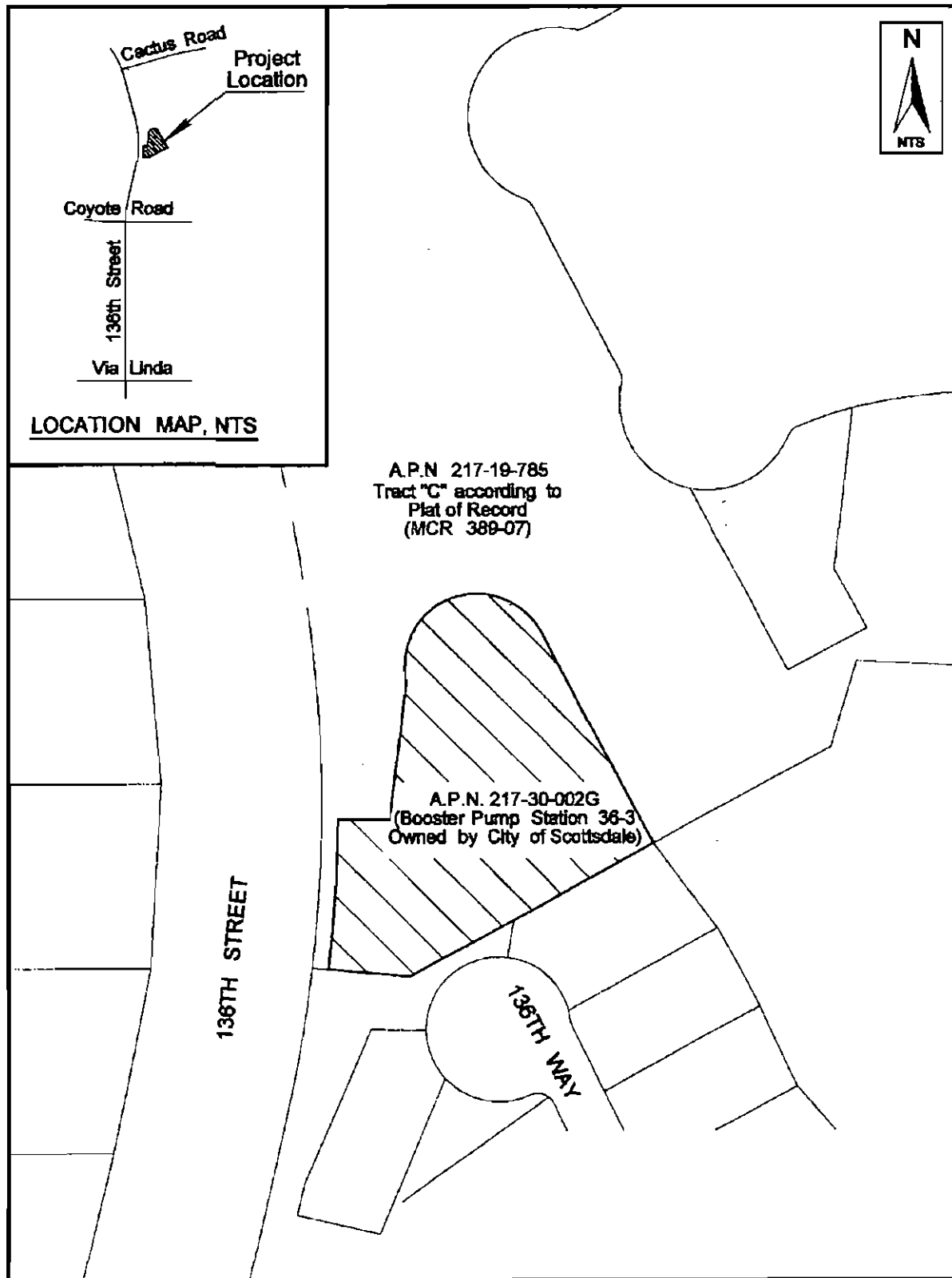
County of Maricopa

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by W.J. "Jim" Lane, Mayor of the City of Scottsdale, Arizona.

\_\_\_\_\_  
Notary Public

My Commisison Expires: \_\_\_\_\_

VERIZON WIRELESS ACCESS-  
BOOSTER PUMP STATION 36-3



VERIZON WIRELESS ACCESS-  
BOOSTER PUMP STATION 36-3

